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AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS
AND RESTRICTIONS OF THE
BAYVIEW CONDOMINIUM ASSOCIATION, INC.

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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF THE
BAYVIEW CONDOMINIUM ASSOCIATION, INC.**

This amended and restated Declaration is made with reference to the following facts:

A. The Association and its Members are the Owners of certain Property located in the City of Millbrae, County of San Mateo, State of California, more particularly described as all of the real property shown on that certain Subdivision Map entitled "The Bayview Condominiums Millbrae," recorded in the Office of the Recorder of San Mateo County, State of California, on the 27th day of August, 1979, in Volume 99 of Maps at Pages 71 through 75.

B. Covenants, conditions and restrictions have previously been imposed upon the Property as recorded on August 31, 1979 at Document No. 55568-AO and a First Amendment thereto recorded on October 5, 1979 at Document Number 68287-AO in the Office of the Recorder of San Mateo County, State of California.

C. The Association intends by this document to amend and restate those restrictions previously imposed upon the Property by the prior Declarations. Said prior Declarations are hereby consolidated into this document, which retains and incorporates all the provisions of the prior Declarations which are not inconsistent with the provisions hereof.

NOW, THEREFORE, Association hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, used, occupied, and improved, subject to the covenants, conditions and restrictions, all of which are imposed as equitable servitudes pursuant to a general plan for the purpose of improving and protecting the value and attractiveness of the Property, and every part thereof. All of these covenants, conditions and restriction shall constitute covenants which shall run with the land and shall be binding upon and inure to the benefit of the Association and all Persons having or acquiring any right, title or interest in or to any part of the Property.

ARTICLE I
DEFINITIONS

Whenever used in the Governing Documents, the following terms shall mean:

1.1. "Articles" means the Articles of Incorporation of the Association as amended from time to time.

1.2. "Association" means Bayview Condominium Association, Inc., a California non-profit mutual benefit corporation.

1.3. "Board" means the Board of Directors of the Association.

1.4. "Bylaws" means the duly adopted Association By-Laws, as the same may be amended from time to time.

1.5. "Civil Code" shall mean the California Civil Code, commonly known as the Davis Stirling Act. The Civil Code can be found online at www.leginfo.legislature.ca.gov.

1.6. "Common Area" means the entire Project, excepting all Units shown on the Map, subject to the rights of use and easements described herein and in the document of conveyance through which each Owner will acquire his or her Condominium. The Common Area includes all lands and improvements not located within the units. The Common Area includes, but is not limited to, all staircases, roofs, foundations, bearing walls, pipes, duct flues, chutes, conduit, wires, utility installations to the outlets, walls, columns and girders to the unfinished surface thereto, regardless of location within said Units.

1.7. "Condominium" means a condominium as defined in Section 783 and 4125 of the California Civil Code, consisting of an individual interest in common in a portion of a parcel of real property, together with a separate interest in space in a residential Unit on such real property; more particularly, an estate in real property, consisting of an undivided percentage interest in the Common Area, together with a separate interest in a Unit as hereinbefore defined in said property, and an exclusive easement to and the exclusive right to use those balcony areas and parking spaces as shown on the Map.

1.8. "Declaration" means this Declaration, as the same may be amended, supplemented, changed or modified from time to time.

1.9. "Director" means those Owners who are elected or appointed to serve on the Board.

1.10 "Governing Documents" means and includes this Amended and Restated Declaration as it may be amended from time to time, and the Articles, Bylaws and Rules.

1.11 "Institutional Holder of First Mortgage" means a bank or savings and loan association, or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

1.12 "Manager" means the Person retained by the Board, and charged with the operation of the Association.

1.13 "Map" means that subdivision map entitled "The Bayview Condominiums, Millbrae" recorded on August 27, 1979, in Volume 99 of Maps at Pages 71 through 75, County of San Mateo, State of California.

1.14 "Member" means a Person entitled to membership in the Association as provided herein.

1.15 "Mortgage" means a deed of trust, as well as a mortgage; "Mortgagee" means a beneficiary under, or a holder of, a deed of trust, as well as a Mortgagee.

1.16 "Owner" means the record Owner or Owners, if more than one of a Condominium in the Project.

1.17 "Person" means a natural person, a corporation, a partnership, a trust or other legal entity.

1.18 "Project" means the entire parcel of real property, divided into condominiums, including all structures and improvements thereon.

1.19 "Property and Improvements" means and includes all that real property more particularly described on the Map.

1.20 "Rules" means the Rules adopted by the Board pursuant to Section 4.3 (a) of this Declaration.

1.21 "Unit" means the elements of a Condominium which are owned individually and not in common with Owners of other elements of the Project. The boundaries of each Unit are a numbered parcel so designated on the Map. The boundaries of each Unit are the interior unfinished surface (exclusive of paint, paper, wax, tile, enamel, or other finishings) of the perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and window frames, door and door frames and trim, and includes both the portions of the building so described and the air space so encompassed. The physical boundaries of the Condominium Unit, or of a Condominium Unit reconstructed in substantial accordance with the original plans thereof, shall be conclusively

presumed to be its boundaries rather than the metes and bounds expressed hereon, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries shown hereon and those of building.

1.22 "Total Voting Power" means the total of ninety-five (95) votes allotted to the Owners.

ARTICLE II
DESCRIPTION OF LAND AND IMPROVEMENTS

2.1 **Condominium Plan Best Authority:** The following description is intended for information purposes only and in the event of any conflict between this description and the Map, the Map shall be deemed to conclusively control.

2.2 **Property Description:** The Property consists of Parcel A of Bayview Condominium as per the Map. The Property consists of an irregularly-shaped plot of land, approximately 3.3 acres in size, located in the City of Millbrae, County of San Mateo, State of California. Construction has been completed on said land and improvements consisting basically of one (1) building, housing a total of ninety-five (95) Units, together with a total of one hundred forty-three (143) parking spaces.

2.3 **Description of Individual Condominium:** Each Condominium within the Project consists of a fee simple interest in a particular Unit, together with an undivided percentage interest as a tenant in common in the Common Area as set forth on Exhibit "A" attached hereto and made a part hereof.

2.4 **Parking Spaces and Balcony Areas:** The deed to each Condominium shall include an exclusive easement to and the exclusive right to use, no less than one (1) parking space and a balcony area, as shown on the Map. All parking spaces shall be used only by the Owners and their lessees and all such Persons shall have and keep in force, property damage insurance on their automobiles.

2.5 **Easements:** Each Owner shall receive, as an incident of conveyance of his or her Unit, a non-exclusive easement appurtenant thereto for ingress, egress and support over, across and through the Common Area and every portion of any Unit within the Project required for the structural support of the building within which the Unit is located. In the event any portion of the Common Area encroaches upon any Unit, or any Unit encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of same, shall exist, so long as the encroachment exists.

2.6 **Delegation of Use:** Any Owner may delegate his or her right of enjoyment to the Common Area to the Owners of his or her family, tenants, or contract purchasers who reside on the Condominium. However, if an Owner has sold his or her Condominium to a contract purchaser or rented it, the Owner, his or her family, guests or invitees, shall not be entitled to use and enjoy the Common Area while the Owner's Condominium is occupied by such contract purchaser or tenant.

ARTICLE III OWNERS' ASSOCIATION

3.1 **Creation of Association:** The Owners of Condominiums shall constitute an Owners' Association. Each Owner of a Condominium shall be a Member of the Association. Association membership shall be appurtenant to Condominium Ownership and each Owner of a Condominium shall automatically be a Member of the Association. Ownership of a Condominium within the Project shall be the sole qualification for membership in the Association.

3.2 **Transfer of Membership:** The Association membership of each Owner shall be appurtenant to the Condominium giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way, except on the transfer of title to said Condominium and then only to the transferee of title to the Condominium. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

3.3 **Association to Manage Property:** The management of the Property and control of the Common Area shall be vested in the Association in accordance with the Governing Documents. The affairs of the Association shall be administered in accordance with the provisions of the Governing Documents.

3.4 **Voting:** At any vote of the Owners, each of the Owners shall be entitled to cast one vote for each Condominium owned by him or her. When more than one (1) Person owns any Condominium, all such Persons shall be Members. The vote for such Condominium shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

ARTICLE IV DUTIES AND POWERS OF THE ASSOCIATION

4.1 **Administration of Project:** The Owners and each of them, together with all parties bound by this Declaration, covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Bylaws and such Rules and

regulations as may be adopted by the Board, and amendments, changes and modifications thereto as may come into effect from time to time. In the event of any inconsistency between the provisions of this Declaration and provisions of the Bylaws or said Rules and regulations, the provisions of this Declaration shall prevail.

4.2. **Duties:** In addition to the duties enumerated in its Governing Documents, and without limiting the generality thereof, the Association shall perform the following duties:

(a) To pay taxes and assessments which are or could become a lien on the Common Area or some portion thereof.

(b) To contract for materials and/or services for the Common Area or the Association.

(c) To maintain the Common Area, all improvements thereon and all utilities thereunder, except those maintained by public utility companies, in good, clean, attractive and sanitary order and repair. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner, or his or her guests, tenants or invitees, the cost of which is not covered by insurance. The cost of repair or replacement resulting from such excluded items shall be the responsibility of the responsible Owner after notice and a hearing as provided in the Bylaws. The maintenance responsibilities of the Association are set forth on Exhibit "B" attached hereto and incorporated herein by reference.

(d) To operate all recreational equipment and facilities located within the Common Area.

(e) To repaint exterior surfaces of all buildings situated on the properties as such repainting is required, in order to preserve the attractiveness of the community. Painting of exterior surfaces shall be deemed to include front doors, shutters, window trim, pot shelves, masonry, exterior walls, underneath side of roof overhangs and garage doors.

(f) To maintain the portion of the Project not occupied by the Units, in good, clean, attractive and sanitary order and repair.

(g) To maintain, repair and paint the roofs of all buildings situated on the property.

(h) To maintain such policies of insurance as are required by Article IX of this Declaration.

(i) To fix, levy, collect, and enforce assessments as set forth in Article V hereof.

4.3. **Powers:** The Association shall have all of the powers set forth in the Articles, Bylaws and this Declaration, together with the general power to do any and all things that a corporation organized under the laws of the State of California may lawfully do in operating for the benefit of its Owners, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to do any and all lawful things that may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration and to do and perform any and all acts that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners and guests of the Owners. In addition to the powers enumerated in its Articles and Bylaws or elsewhere provided for herein and without limiting the generality thereof, the Association shall have the following powers:

(a) To adopt Rules in accordance with the Declaration and Civil Code Section 4340 et seq., relating to the use of the Common Area and all facilities thereon, and the conduct of Members and their tenants and guests with respect to the Property and other Members; impose fines and other discipline, establish move-in fees, title transfer fees, and such other fees as may be reasonably necessary for the operation of the Association. Written copies of such Rules and any schedule of fines or penalties adopted by the Board shall be furnished to the Owners.

(b) To enforce the provisions of the Governing Documents in any manner provided by law or in equity, including but not limited to self help. The Association may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Governing Documents. Penalties may include, but are not limited to, fines, recording a notice of noncompliance against a Condominium, suspension of voting rights, or rights to use the recreational facilities or other appropriate discipline, provided the Owner is given notice and a hearing as provided in the Bylaws, except for the failure to pay assessments.

(c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of real property, except the sale of a Condominium acquired through foreclosure of assessment lien, shall be approved by the affirmative vote of Owners representing a majority of a quorum of the Total Voting Power.

(d) To employ a Manager or other Persons and to contract with independent contractors to perform any assigned duties as directed by the Board, except for the responsibility to levy fines, impose discipline, hold hearings, or make capital expenditures. Any contract with a firm or Person appointed as a Manager or managing agent shall not exceed a one (1) year term and shall provide for the right of the Association to terminate the same for cause on thirty (30) days' written notice, and without cause and without payment of a termination fee or penalty on ninety (90) days' written notice.

(e) To, by the affirmative vote of Owners representing a majority of a quorum of the Total Voting Power, grant easements in addition to those shown on the Map, where necessary for utilities, cable television, sewer facilities, or other purposes, over the Common Area to serve the Owners or Condominiums in common.

(f) To borrow money, but, only with the affirmative vote of Owners representing a majority of a quorum of the Total Voting Power, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

ARTICLE V ASSESSMENTS

5.1. Creation of the Lien and Personal Obligation For Assessments: Each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees: (a) to pay to the Association annual, special, emergency and reimbursement assessments, such assessments to be established and collected as hereinafter provided; and (b) to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law. The annual, special, emergency and reimbursement assessments, together with interest, late charges, collection costs, and attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment lien. Each such assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the Persons, joint and several, who were the Owners of such Condominium at the time when the assessment fell due. No Owner shall be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Condominium. The interest of any Owner in the amounts paid pursuant to any assessment upon the transfer of Ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such assessments after paying all amounts properly charged against such assessments shall be distributed to the then Owners on the same pro rata basis on which the assessments were collected.

5.2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Association, and to enable the Association to perform its obligations hereunder.

5.3. Assessments: There are four (4) types of assessments: annual; special; emergency and reimbursement.

5.3.1. Annual Assessment: The Board shall establish and levy annual assessments, in an amount that the Board estimates will be sufficient to raise the funds needed to

perform the duties of the Association during each fiscal year. The annual assessment shall also include a portion for reserves as the Board considers appropriate to adequately meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair.

5.3.2. **Special Assessments**: The Board at any time may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate.

5.3.3. **Emergency Assessments**: The Board, without membership approval, may increase annual assessments or levy special assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

(a) an extraordinary expense required by an order of a court,

(b) an extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety or the Property is discovered, or

(c) an extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget, provided, however, that prior to the imposition or collection of the assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the Owners with the notice of the assessment.

5.3.4. **Reimbursement Assessments**: The Board may levy a reimbursement assessment against any Owner and his or her Condominium who has caused damage to the Common Area, or whose failure to comply with the Governing Documents has necessitated an expenditure of monies by the Association to bring such Owner or Condominium into compliance with said documents or in otherwise performing its functions, including but not limited to attorneys' fees. Such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended, shall be due and payable to the Association when levied and shall be levied only after notice and a hearing as provided in the Bylaws.

5.4. **Restrictions on Annual or Special Assessments**: The Board may not impose an annual assessment which is more than twenty percent (20%) greater than the annual assessment for the immediately preceding fiscal year, or levy special assessments to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the vote or written consent of Owners casting a majority of the votes at a meeting of the Association at which a

quorum is present. For the purposes of this Section, "quorum" means more than fifty percent (50%) of the Total Voting Power.

5.5. **Division of Assessments:** Annual, special and emergency assessments shall be charged to and divided between the Condominiums in proportion to their interest in the Common Area as set forth on Exhibit "A." Reimbursement assessments may be levied against any individual Condominium.

5.6. **Notice of Assessment:** The Association shall provide notice by first-class mail to the Owners of any increase in the annual assessment, or special or emergency assessments, not less than thirty (30) nor more than sixty (60) days prior to the assessment becoming due.

5.7. **Due Date of Assessments:** The Board shall fix the amount of the annual assessment against each Condominium and send written notice thereof to every Owner at least thirty (30) days in advance of each annual assessment period, provided that failure to comply with the foregoing shall not affect the validity of any assessment levied by the Association. Failure by the Board to set assessments shall not be deemed a waiver of the assessments but rather the prior year's assessment shall continue. Each Owner shall be obligated to pay assessments in equal monthly installments on or before the first day of each month, or in such other reasonable manner as the Board shall designate. Special or emergency assessments may be collected in one (1) payment, or periodically as the Board shall direct.

5.8. **Effect of Nonpayment of Assessments:** Any assessment not paid within fifteen (15) days after the due date shall be delinquent, shall incur a late payment penalty in the amount of ten percent (10%) of the delinquent assessment and shall bear interest at the maximum rate allowed by law commencing thirty (30) days after the due date until paid.

5.9. **Transfer of Condominium by Sale or Foreclosure:** Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale of any Condominium pursuant to the foreclosure of a First Lien Mortgage shall extinguish the lien of such assessments (including attorney's fees, late charges, or interest levied in connection therewith) as to payments that became due prior to such foreclosure sale, except for assessment liens recorded prior to the Mortgage. No sale or transfer shall relieve such Condominium from liability for any assessments thereafter becoming due or from the lien thereof.

Where the Mortgagee of a first Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure of any such first Mortgage, such acquirer of title, his or her successor and assigns, shall not be liable for the assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer, except for assessment liens recorded prior to the Mortgage. No amendment to the preceding sentence may be made without the affirmative vote of Owners representing at least sixty-seven percent (67%) of the Total Voting Power, and the consent of fifty-one percent (51%) of the Eligible Mortgage Holders. Such unpaid share of common expenses or

assessments shall be deemed to be common expenses collectible from all of the Owners including such acquirer, his or her successors or assigns.

In any transfer of a Condominium, the grantor shall remain personally liable to the Association for all unpaid assessments against the Condominium up to and including the date of the transfer. The grantee shall be entitled to a statement from the Association dated as of the date of transfer, setting forth the amount of the unpaid assessments against the grantor due the Association. The grantee shall be personally liable for assessments imposed after the transfer. In any event, the Condominium shall be subject to a lien for all such assessments.

5.10. **Enforcement; Remedies:** If an assessment is delinquent, the Association may record a notice of assessment lien against the Condominium of the delinquent Owner prior and superior to all other liens except (a) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (b) the lien or charge of any First Lien Mortgage. The notice of assessment lien shall state the amount of the assessment, collection costs, attorney's fees, late charges, and interest, a description of the Condominium against which the assessments and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any agent retained by the Association for that purpose.

An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the assessment lien, or sale by a trustee substituted pursuant to California Civil Code Section 2934(a). Any nonjudicial sale shall be conducted in accordance with the provisions of Sections 5720, 2924, 2924b, 2924c, 2924f, 2924g, and 2924h of the California Civil Code, or any successor statutes thereto, applicable to the exercise of powers of sale in Mortgages and deeds of trust, or in any other manner permitted by law. The Association shall be entitled to recover all attorneys' fees and costs incurred from the defaulting Owner.

The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period a Condominium is owned by the Association following foreclosure: (a) no right to vote shall be exercised on behalf of the Condominium; (b) no assessment shall be assessed or levied on the Condominium; and (c) each other Condominium shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure. The Board may execute, acknowledge, and record a deed conveying title to the Condominium which deed shall be binding on the Owners, their successors, and all other parties.

Nothing herein shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay assessments. Suit to recover a money judgment for unpaid assessments, late charges, interest and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may suspend the voting rights of a Member who is in default in payment of any assessment, without notice and hearing.

5.11 **Waiver of Exemption:** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article V the benefit of any homestead or exemption law of California in effect at the time any assessment or installment thereof becomes delinquent or any lien is imposed.

5.12 **Unallocated Taxes:** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, such taxes shall be included in the assessments made under the provisions of Section 5.3.1 and, if necessary, a special assessment may be levied against the Units in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE VI USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Property and each Condominium therein is subject to the following:

6.1 **Residential Use:** Each Condominium shall be used for residential purposes only and no part of the Property shall be used for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of a Condominium may use a room or rooms in the Unit as an office provided that the use is judged by the Board to be unobtrusive to other residents; that the primary use of the Condominium is as a residence; no advertising or sign is used in any manner in connection with the office use; no customers, suppliers, clients, or patients enter the Condominium on any regular basis, and that no vehicles are parked, laid over, or dispatched from the Property. The Board shall have the authority to adopt additional Rules regarding the use of offices within the Property in order to maintain the residential characteristics of the Property. Residency shall be limited to no more than two (2) persons per bedroom, plus one person, in any Condominium. No tent, trailer, mobile home, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence either temporarily or permanently.

6.2 **Maintenance of Unit:** The Owners shall maintain in good repair the interiors of their Units and shall have the exclusive right, at their sole cost and expense, to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, windows and doors bounding their respective Units. Owners shall maintain, repair and replace their windows and sliding glass doors, including frame, hardware and screen. Owners shall keep their exclusive use parking spaces, patios and balconies neat and clean. Owners shall prevent potted plants or any other property from damaging deck surfaces, and shall be responsible for any damages caused thereby. Each Owner shall maintain, repair and replace the landscaping, hose bib, faucet and spigot in their patio. Each Owner shall maintain their wastewater drain pipes from the Unit to a common pipe shared by another Unit. Owners shall maintain all lights controlled by a switch located in their Unit. The maintenance responsibilities of the Owners and the Association

are set forth on Exhibit "B" attached herein by reference. Each Owner shall clean his or her fireplace and chimney flue. All exterior window coverings must be white or beige.

If an Owner fails to so maintain his or her Unit or make repairs thereto in such manner as may be deemed necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project, the Board shall give written notice to such Owner stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that same be carried out within a period of sixty (60) days from the date such notice is given. If such Owner fails to carry out such maintenance or repair within the period specified in the notice, and after notice and a hearing as provided in the Bylaws, the Board may cause such work to be done and shall assess the cost thereof to such Owner, such assessment to be due and payable within thirty (30) days after the Board gives written notice thereof.

6.3 Other Structural Changes: No Owner shall, at his own expense or otherwise, make any alteration, addition or modification to the building in which his or her Unit is located, or to any part or portion of the Common Area without the prior written approval of the Board. This includes the removal of carpeting for the purpose of installing any type of floor covering other than replacement carpeting. Any Owner requesting the replacement of carpet flooring with any hard surface material such as hardwood flooring, must submit manufacturer's specifications or samples verifying that the flooring material is engineered to lessen sound transference between below and adjoining Units. The Owner will also be required to obtain written permission and release of liability from below and adjoining Owners. With respect to the installation of awnings, sunshades, screen doors and other minor installations to any individual Unit, the prior written consent of the Board shall be exercised with a view toward promoting uniformity and thereby enhancing the attractiveness of the Property as a whole. No radio or television receiving or transmitting antennae or external apparatus shall be installed on any part of the Common Area, without the prior written approval of the Board. Normal radio and television installations within an individual Unit or balcony are excepted.

6.4 Signs: No sign or flag of any kind shall be displayed to the public view in the Common Area without the prior written consent of the Board. No signs or flags shall be displayed to the public view on any Condominiums, except (a) such signs as are approved by the Board; (b) one (1) "For Sale" or "For Rent" or "For Exchange" sign not more than four (4) square feet in size, provided the design and locations are reasonable, (c) a noncommercial sign, poster, flag, or banner made of paper, cardboard, cloth, plastic, or fabric, may be posted or displayed from the window, door, balcony, or outside wall of the Unit and; (d) the American flag. Signs may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or including the painting of architectural surfaces.

6.5 Offensive Activity: No Owner shall permit or suffer anything to be done or kept on the Project which shall increase the rate of insurance thereon, or which shall obstruct or interfere with the rights of other Owners, or annoy them by unreasonable smells, noises or otherwise, nor shall he or she commit or permit any nuisance on the Project, or commit or suffer

any immoral or illegal act to be committed thereon. Each Owner shall comply with all applicable Rules, ordinances and statutes and with the requirements all governmental authorities with respect to the occupancy and use of his or her Unit. There shall be no harassment of any Owner, tenant, Manager, contractor or vendor by any Owner or tenant. There shall be no smoking of any substance anywhere on the Property, including the Units and the Common Area.

6.6 Owner Liability: Each Owner shall be liable to the Association for any damage to the Common Area or to any equipment or improvements thereon which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family members, relatives, guests or invitees both minor and adult to the extent that any such damage shall not be covered by insurance. Each Owner shall be liable to the Association for the cost of repair of any and all damage caused by a waste over flow if it is determined by the Board, based upon any and all relevant information, to be caused by that Owner's exclusive use waste pipes. Said Owner shall be assessed by the Board for the cost of repair or replacement thereof, together with costs and attorney's fees, after notice and a hearing as provided in the Bylaws. In the case of joint ownership of a Unit, the liability of such Owners shall be joint and several. In the event of personal injury or property damage sustained by any one person while physically within the Unit or private balcony or patio, and in the further event any other Owner shall be sued or a claim made against him or her for said injury or damage, the Owner(s) of the Unit(s) in which said injury or damage occurs shall fully indemnify and hold harmless any such other Owners against whom such claim shall be made, and shall further defend any such other Owners, at their own expense in the event of litigation of such claim, provided that such protection shall not extend to any other Owner whose own negligence may have caused or contributed to the cause of any such injury or damage.

6.7 Common Area Improvements: No fence, hedges or walls shall be erected and maintained on the Common Area except such as are installed in accordance with the initial construction of the buildings located thereon or approved in writing by the Board and further, no building, fence, structure or wall shall be constructed on any of the open spaces unless approval therefor has been specifically obtained from the appropriate department of the City of Millbrae.

6.8 Parking Restrictions: No trailer, camper, boat or similar-type vehicle shall be permitted to remain on any portion of the Common Area. No Unit Owner shall park his or her vehicle or allow his or her guests and/or tenants to park their vehicles in any space other than that assigned to the Owner and any spaces designate as "guest parking spaces." No noisy, smoky, inoperable or unlicensed vehicles shall be operated or parked upon the Property. There shall be no repair or reconstruction of vehicles within the Property except for emergency vehicle repairs. The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by any Owner, their family, guests or tenants, in any manner allowed by law. The Association shall not be liable for any damages incurred by the vehicle owner, or any Owner, because of the removal in compliance with this section, or for any damage to the vehicle caused by the removal. The Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated handicapped without prior authority, or in a manner which interferes with any entrance to, or exit

from, the Property or any parking space located thereon. The Board is authorized to adopt parking and vehicle Rules for common and assigned parking places.

6.9 **Rubbish**: Trash, rubbish and trash receptacles shall not be permitted to remain on any portion of the Common Area, other than those trash bins provided by the Association.

6.10 **Pets**: One (1) usual and ordinary domestic dog, cat, fish or bird (inside a bird cage) may be kept as a household pet within any Condominium; provided it is not kept, bred or raised for commercial purposes and the prior written approval of the Board is first obtained. The Association shall have the right to prohibit the maintenance of any pet which constitutes, in the opinion of the Board, a nuisance to any other Owner, after notice and a hearing to the Owner of such pet.

Notwithstanding the foregoing, nothing herein contained shall be construed in such a manner as to permit the maintenance of any animal contrary to any ordinance of the City of Millbrae.

Dogs over twenty-five (25) pounds in weight, or fighting breeds, including but not limited to, Pit Bulls, Rottweilers, Akita, including Japanese and Akita Inu, Bernes, including Mountain Dog, Berner Sennenhund, Bernese Cattle Dog, Canary Dogs, including Perro de Presa Canario, Chow Cow, Doberman, Husky, including American, Eskimo and Greenland, Karelian Bear Dog, Rhodesian ridgeback, Russo-European Laika, including Russian Laika and Karelian Bear Laika, Wolf Hybrids And any breed of guard dog trained to attack are prohibited. Owners shall prevent their pet from making excessive noise and from soiling walks, paths, patios, courtyards, lawn and shrub areas, all portions of the Common Area. Each Owner shall pick up their pet's droppings and be financially responsible for any damage caused by any pet kept by the Owner or his or her family, tenants or guests. The Board is authorized to adopt rules for pets and their owners.

6.11 **Association Maintenance and Decoration Authority**: The Board or its duly appointed agent, including the Manager, if any, shall have the exclusive right to paint, decorate, repair, maintain, alter or modify the exterior walls, balconies, railings, exterior door surfaces, roofs and installations and improvements on the Common Area, and no Owner of a Unit shall be permitted to do or have done any such work. The prior written approval of the Board shall be required for installation of any awnings, sunshades or screen doors.

6.12 **Exploration of Minerals**: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on or in the Project, or within five hundred (500) feet below the surface of the Property and no derrick or other structure designed for use in boring for water, oil or natural gas, shall be erected, maintained or permitted on any portion of the Project.

6.13 **Lease**: As used in this Section "Lease" shall mean any and all agreements, including, but not limited to Leases, subleases, rental agreements, for the use or occupancy of all or any part of a Condominium. Any Owner who wishes to lease his or her Condominium must

comply with each of the following restrictions, and the Lease will be subject to these restrictions whether they are included within the Lease or not:

1. Owners are required to personally reside in their Condominiums, except that no more than twenty-eight (28) of the Condominiums may be leased to others by the Owners thereof at any time. The Board may enact Rules and Regulations to implement restrictions on leasing.

2. All Leases must:

- (a) follow the current Rules and Regulations and this Declaration, which must be made a part of and attached to the lease; and
- (b) be acknowledged in writing by the lessee.

3. All Owners who lease their Condominiums shall promptly notify the Secretary or Association Manager in writing with a copy of the first and last pages of the Lease together with:

- (a) an acknowledgement the Lessee has received the Rules and Regulations and the Declaration, and
- (b) remit to the Association the required turnover fees,
- (c) a copy of the Bayview Rental Application for every tenant occupying such condominium, and
- (d) address, email, and telephone number where such Owner can be reached.

4. Each Owner shall be responsible for compliance with the provisions of the Rules and the Declaration by his or her tenants and shall pay the penalties imposed pursuant to the Rules and the Declaration for any violation thereof by his or her tenant(s). The Owner shall be liable for any and all damages and costs incurred by the Association due to their tenants and their tenant's guests.

5. By becoming a tenant, each tenant agrees to be bound by the Rules and the Declaration, and recognizes and accepts the rights and power of the Association to evict a tenant for any violation by the tenant of the Rules and the Declaration. Any failure of the tenant to comply with the Rules and the Declaration shall be a default under the Lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant. The Association will give the Owner notice and a hearing as provided in the Bylaws before the Association may file for eviction.

6. If any Owner, acting as a landlord or tenant is in violation of the provisions of the Rules and the Declaration, the Association, after reasonable notice to the Owner, may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant has violated any of the provisions of the Rules and the Declaration, the court may find the tenant guilty of unlawful detainer notwithstanding the

fact that the Owner is not a plaintiff in the action and/or the tenant is not otherwise in violation of tenant's Lease with the Owner/landlord. For purposes of granting a forcible detainer against the tenant, the Owners and their tenants agree that the Lease was made for the express benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedies that the Association has. The Association may recover all its costs, including court costs and reasonable attorneys' fees, and such costs and fees shall also be enforceable by a reimbursement assessment.

7. The Board of Directors shall have the authority, in cases they determine to be hardships, to grant relief from this Section. This granting shall be determined on a case-by-case basis.

8. Grandfather Provision. This Section shall not affect or be applicable to any Owner of record as of January 2, 2014, or as provided in Civil Code Section 4740(c). However, all Condominiums will be counted for the purposes of determining the number of leased Condominiums.

6.14 **Smoking:** Bayview Condominium Association is a **smoke-free property**. There is to be no Smoking in or about the Project. The Smoking and Vaping of cigarettes, cigars, pipes or any other substances or devices, with or without medical prescription, shall NOT be permitted or allowed within the Project, including, but not limited to, the Common Area or within any Unit or within any Exclusive Use Common Area.

ARTICLE VII GENERAL PROVISIONS

7.1 **Owner Key Deposit For Emergency Repair:** The Board shall have authority to designate one or more qualified repairmen or other persons, to enter on and within any individual Unit, with or without the presence of the Owner or occupant thereof for the purpose of making emergency repairs therein or for necessary maintenance or repair of portions of the Common Area, or to abate any nuisance being conducted or maintained in said Unit in order to protect the property rights and best interests of the remaining Owners. To facilitate this paragraph, all Owners shall deposit with the property Manager, or his or her nominee, a key to their Unit.

7.2 **Continuing Liability for Assessments:** No Owner may exempt him or herself from liability for his or her specified contribution to the maintenance fund by waiver of the use or enjoyment of the Common Area or by abandonment of his or her Unit.

7.3 **Non Discrimination:** No Owner shall, either directly or indirectly forbid or restrict the conveyance, encumbrance, leasing, or mortgaging, or occupancy of their Condominium to any person of a specified race, sex, gender, gender identity, gender expression, adulthood,

marital status, color, religion, ancestry, disability, genetic information, source of income, sexual orientation, national origin, or any other protected class.

7.4 **Taxes:** Each Owner shall pay any real and personal property taxes separately assessed against his or her Unit and all utility charges separately metered or charged against his or her Unit, and such payment shall be made by each Owner in addition to and separately from assessments otherwise payable to the Association by such Owner.

7.5 **Enforcement of Declaration and Bylaws:** The Owners or any one of them or the Board acting on behalf of the Association shall be entitled to bring legal action for damages against any Condominium Owner who shall default in the performance of any of the provisions hereof, the Bylaws or Rules and regulations adopted by the Board for the protection of the Project, including but not limited to, the covenant to pay assessment charges. Further, said Persons shall be entitled to enjoin any violation of said documents, Rules and regulations and shall be entitled to prosecute any other legal or equitable action that may be necessary to protect the Project. If any Owner or the Board shall deem it necessary to initiate any legal or equitable action for the protection of the Project against any Owner, then said Persons shall be entitled to reasonable attorney's fees and costs of said action from said Owner for expenses incurred in bringing or initiating the action. Any judgment rendered against any such defaulting Owner shall include costs of said action, together with reasonable attorney's fees in an amount to be fixed by the court. Notwithstanding the foregoing, there shall be no purported power in the Association to cause a forfeiture or abridgement of an Owner's rights to the full use and enjoyment of his or her individually owned Condominium because of a failure by an Owner to comply with the provisions of this Declaration, Bylaws or duly enacted Rules of operation for the Common Area and facilities, except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or because of a foreclosure sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

7.6 **Liberal Interpretation of Declaration:** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Project for the mutual benefit of all Owners

7.7 **Severability of Provisions:** The provisions herein shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any of the provisions herein shall not affect the validity of the remaining provisions.

7.8 **Cumulative Remedies:** Each and all legal or equitable remedies provided for herein shall be deemed to be cumulative, whether so expressly provided for or not.

7.9 **Successors and Assigns:** This Declaration shall be binding on and shall inure to the benefit of the Owners, their heirs, personal representatives, successors and assigns.

7.10 **Waiver or Breach of Declaration**: No waiver or any breach of any of the covenants or conditions herein contained shall constitute a waiver of any succeeding or preceding breach of the same or any other covenant or condition contained herein.

7.11 **Joint and Several Liability**: In the case of joint ownership of a Unit, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

7.12 **Owner's Notice**: Each Owner shall, on an annual basis, provide written notice to the Association of all of the following:

(a) The address or addresses to which notices from the Association are to be delivered.

(b) The alternate or secondary address to which notices from the Association are to be delivered.

(c) The name and address of his or her legal representative, if any, including any Person with power of attorney or other Person who can be contacted in the event of the Owner's extended absence from the Condominium.

(d) Whether the Condominium is Owner-occupied, is rented out or vacant.

If the Owner fails to provide the notices set forth herein the Condominium address shall be deemed to be the address to which notices are to be delivered.

7.13 **Notice of Transfer**: No later than fifteen (15) days after the sale or transfer of any Condominium, the transferee shall notify the Association in writing of such sale or transfer. Such notice shall set forth:

(a) the Condominium involved;

(b) the name and address of the transferee and transferor; and

(c) the date of sale or transfer.

Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to said transferor. However, the Owner shall be responsible for compliance with all the Governing Documents whether or not notice is given.

ARTICLE VIII
UTILITIES

8.1 **Utility Rights:** The rights and duties of the Owners with respect to lines for sanitary sewer, water, gas, electricity, telephone, television and internet cables shall be governed by the following:

(a) Wherever sanitary sewer house connections and lines or electricity, gas, telephone, television or internet cables are installed within the Property which connections or any portion thereof, lie in or on portions of the Property owned by others than the Unit Owner of a Unit served by said connections, the Unit Owners of any Unit served by said connections shall have the right and are hereby granted an easement to the full extent necessary therefor to enter on such portion of the Property or to have the utility companies enter thereon to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.

(b) Wherever sanitary sewer hose connections and lines, facilities and/or water hose connections and lines or electricity, gas, telephone, television or internet cables are installed within the Property, which connections serve more than one Unit, the Owners of each Unit served by said connections shall be entitled to the full use and enjoyment of such portions of said connections and serve his or her Unit.

(c) In the event any portion of said connection or line is damaged or destroyed through the negligent act or acts or failure to act or willful misconduct of one Unit Owner or any of his or her agents invitees, tenants, servants, guest or members of his or her family so as to deprive other Unit Owners of the full use and enjoyment of said connection or line, then such connection or line shall be repaired and restored by the Association but at the expense of the Unit Owner who commits or whose guests, agents or family members commit such act or acts.

(d) In the event any portion of such connection or line is damaged or destroyed by some cause other than the negligence or willful misconduct of one of the Unit Owners, his or her family members, agents, guests, servants, tenants or invitees, (including ordinary wear and tear and deterioration from lapse of time), then in such event such connection or line shall be repaired and restored by the Association.

(e) Waste water drain lines serve stacks of six (6) Units, two (2) on each floor. Owners and their family members, tenants, and guests are prohibited from disposing of any material or substance down sinks, drains or toilets that causes a clog and shall be liable to the Association and other Owners for the repair of any damages caused thereby. The Board is authorized to adopt Rules to enforce such prohibition. In the event that the Board is unable to identify the Owner responsible for the clog, each Owner shall be responsible for the repair of his or her Unit interior damages, and the cost of Common Area repairs shall be equitably divided between the six (6) Owners in the stack, as determined by the Board.

(f) In the event of a dispute between Owners with regard to the repair or rebuilding of said connection or line, or with regard to the sharing of the cost thereof, then on written request of one of such Owners addressed to the other the matter shall be submitted to alternative dispute resolution pursuant to Civil Code Sections 5925 et. seq.

8.2 **Easements**: Easements through the Units and Common Area for all facilities for the furnishing of utility services, telephone, television and internet cable service, or heating within any Unit, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring, shall be appurtenant to each Unit and all other Units and Common Area shall be subject thereto; provided that easements for such facilities shall at all times be and remain substantially in accordance with the initial construction of the Project or the Project as reconstructed after damage or destruction pursuant to the terms of this Declaration.

ARTICLE IX INSURANCE

9.1 **Association Insurance**: Association shall obtain and maintain the following insurance:

(a) A master hazard policy insuring one hundred percent (100%) of the insurable replacement cost of all of the Common Area in the Property;

(b) If obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or Personal property; the amount of general liability insurance which the Association shall carry at all times shall be not less than \$3,000,000.00 aggregate;

(c) Workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a certificate of insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(d) Fidelity bonds or insurance covering officers, Directors, and employees that have access to any Association funds;

(e) Officers and Directors liability insurance in at least the minimum amount of \$1,000,000;

(f) Earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates as determined by the Board; and

(g) Such other insurance as the Board in its discretion considers necessary or advisable.

(h) The following endorsements should be included, if applicable: (i) changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement"); (ii) inflation guard coverage; (iii) "agreed-amount" endorsement (to eliminate a coinsurance problem); (iv) replacement cost endorsement; and (v) primary coverage endorsement.

9.2 Coverage Amounts: The amount, term, and coverage of any policy required hereunder including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard Mortgage clauses, and notices of changes or cancellations shall satisfy the minimum requirements imposed for this type of Property by the Civil Code, the Federal National Mortgage Association ("FNMA") and the Federal Housing Administration ("FHA") or any successor thereto, unless the cost thereof is determined by the Board to be unreasonable. If the FNMA or FHA requirements conflict, the more stringent requirement shall be met. If FNMA and FHA do not impose requirements on any policy required hereunder, the term, amount, and coverage of such policy shall be no less than that which is customary for similar policies on similar properties in the area. The Board shall periodically and not less than once every three (3) years review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

9.3 Insurance Trustee: Each Owner appoints the Association or any insurance trustee designated by the Board to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including, without limitation, representing the Owners in any proceeding, negotiation, settlement, or agreement.

9.4 Waiver of Subrogation: Any insurance maintained by the Association shall contain a waiver of subrogation as to the Association and its officers, the Directors, the Owners and occupants of the Condominiums and their Mortgagees, and, if obtainable, a cross liability or severability of interest endorsement insuring each insured against liability to each other insured. However, an Owner shall pay any deductible incurred by the Association due to the negligent or intentional act or omission of the Owner, his or her family, guests, tenants, or pets, after notice and a hearing as provided in the Bylaws.

9.5 Owners' Insurance: Insurance maintained by the Association does not cover improvements inside an Owner's Unit and does not cover personal liability for damages or injuries occurring within the Unit or caused by the Unit Owner or occupant. Each Owner shall insure his or her personal property and the improvements within his or her Unit including, but not limited to, floor coverings, wall coverings, window shades, draperies, furniture, furnishings, light fixtures, cabinets, appliances and all other improvements located within the boundaries of his or her Unit against loss. Each Owner shall obtain personal liability insurance in the minimum amount of \$500,000. In addition, any improvements made by an Owner within his or her Unit must be

separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance." No Owner shall separately insure his or her Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance.

9.6 **Failure to Insure:** The Association, its Directors and officers shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Owners fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Owner and Eligible Mortgage Holders that the insurance will not be obtained or renewed.

9.7 **Limitation of Liability:** Neither the Officers, the Directors, nor the Association, shall be liable for any failure of water supply or other service to be obtained and paid for by the Association hereunder, or for injury or damage to Person or property caused by the elements, or by an Owner or occupant, or resulting from water or dirt which may leak or flow from outside or from any parts of the Common Area, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place, unless the Association is insured for the loss. No diminution or abatement of assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

ARTICLE X DESTRUCTION OF IMPROVEMENTS

10.1 **Reconstruction with Election of Owners:** In the event of partial or total destruction of improvements of the Common Area and if the available proceeds of the insurance carried are sufficient for not less than ninety percent (90%) of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless within forty-five (45) days from the date of such destruction, Owners representing seventy-five percent (75%) or more of the Total Voting Power vote that such reconstruction shall not take place. If reconstruction is to take place, the Board shall be required to execute, acknowledge, file and record not later than one hundred twenty (120) days from the date of such destruction a certificate declaring the intention to rebuild. If the proceeds of such insurance are less than ninety percent (90%) of the cost of reconstruction, such reconstruction may nevertheless take place, if within forty-five (45) days from the date of said destruction, Owners representing a majority Total Voting Power votes to rebuild.

10.2 **Reconstruction Assessments:** If Owners determine to rebuild, each Owner shall be obligated to contribute such funds as shall be necessary to pay his or her proportionate

share of the reconstruction costs over and above the insurance proceeds and the proportionate share of each Owner shall be the same as his or her proportionate interest in the Common Area. In the event of failure or refusal by any Owner to pay his or her proportionate share after notice to him or her, should such failure or refusal continue for a period of sixty (60) days, the Board may levy an assessment against the Owner which may be enforced under the lien provisions contained in this Declaration.

10.3 Obligation of the Board: If the Owners determine to rebuild, the Board shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest responsible bidder. The Board shall have authority to enter into a written contract with the contractor for such reconstruction work and the insurance proceeds held by the Board shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of the reconstruction at the earliest possible time.

10.3.1 Owner's Responsibility for Repair: Each Owner shall be responsible for the reconstruction, repair or replacement of the interior of his or her Unit, including but not limited to, the floor coverings, wall coverings, window shades, draperies, furniture, furnishings, light fixtures, cabinets, appliances, and all other improvements not covered by insurance maintained by the Association.

10.4 Determination Not to Rebuild: If the Owners shall vote not to authorize rebuilding:

(a) Subject to the rights of mortgagees, any insurance proceeds available for such rebuilding, shall be distributed among the Owners and their individual mortgagees by the Board, as their respective interests may appear, according to the fair market value of each Condominium in relation to the fair market value of all Condominiums, said values to be determined a qualified independent appraiser selected by the Board. In the event of a failure to agree on an appraiser, the appraiser shall be appointed by the then President of the San Mateo County Bar Association.

(b) The Board shall have the duty, within one hundred twenty (120) days of the date of such loss to execute, acknowledge and record a certificate setting forth the determination of the Owners not to rebuild and shall promptly cause to be prepared and filed such revised maps and other documents as may be necessary to show the conversion of the Project to the status of unimproved land or to show the elimination of one or more of the Units as a result of such destruction.

10.5 Revival of Right to Partition Condominium: Upon the recordation of a certificate of intention not to rebuild, the right of any Owner to partition his or her Condominium through legal action shall forthwith revive.

10.6 **Condemnation**: The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

In the event of a taking or acquisition of part or all of any Unit or Units, the proceeds shall be payable to the affected Owners and their Mortgagees who shall thereafter be divested of any right, title or interest in the Property. The remaining portion of the Property shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Property. Where the condemned Condominiums are not valued separately by the condemning authority or by the court, proceeds of condemnation shall be distributed among Owners and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Property can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree on an appraiser, the appraiser shall be appointed by the then President of the San Mateo County Bar Association.

If there is a substantial taking of the Property (more than fifty percent (50%) of all Property improvements), the remaining Owners may sell the remaining Property with the affirmative vote of a majority of the remaining Owners and the approval of fifty-one percent (51%) of the remaining Mortgagees. For the purpose of effecting a sale under this section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Property, terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to repair and resurvey, or to sell the entire Property as permitted hereunder within sixty (60) days following the date of a substantial taking, any Owner may file a partition action as to the entire Property under Civil Code Section 4610, or any successor statute, and the court shall order partition by sale of the entire Property and distribution of the sale proceeds as provided herein. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described above.

ARTICLE XI
SUSPENSION OF THE RIGHT TO PARTITION

The right of partition of the Common Area is hereby suspended pursuant to Section 4610 of the California Civil Code. The Project may be partitioned and sold as a whole pursuant to the provisions of Section 4610 of the Civil Code upon a showing of the occurrences of any one

of the events provided therein. Further, partition may be had of the Project upon a showing that the conditions for such partition by sale set forth in Article X hereinabove have been met. Nothing herein contained shall prevent partition or division of interest between joint or common Owners of one Condominium.

ARTICLE XII
PROHIBITION AGAINST SEVERABILITY OF COMPONENTS IN UNITS

12.1 **Prohibition of Severance:** No Owner shall be entitled to sever either his or her Unit or any appurtenant easements thereto in any Condominium from his or her undivided interest in the Common Area for any purpose. None of said component interests may be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with and any violation or attempted violation of this provision shall be void and of no effect.

12.2 **Conveyance of Entire Condominium:** Any conveyance of a Condominium or component interest in the Common Area by the Owner of any Condominium shall be presumed to convey the entire Condominium, provided that nothing herein contained shall be construed to preclude the Owner of any Condominium from creating a co-tenancy in the ownership of said Condominium with any other Person(s).

ARTICLE XIII
TERM OF DECLARATION - COMPLIANCE WITH RULE AGAINST PERPETUITIES AND RESTRAINTS OF ALIENATION

The covenants contained herein shall run with the land and shall be binding on all Owners and all Persons claiming under them until January 1, 2059, after which time the covenants shall be automatically extended for successive periods of twenty-one (21) years, unless an instrument approved by the affirmative vote of Owners representing seventy-five percent (75%) of the Total Voting Power shall be recorded, cancelling or terminating this Declaration.

ARTICLE XIV
PROTECTION OF LENDERS

14.1 **Written Notification to First Mortgagees:** A first Mortgagee is entitled to written notice from the Board of Directors of any default in the performance of an individual Condominium mortgagor of any obligation under this Declaration, the Bylaws and Articles of Incorporation which is not cured within thirty (30) days. It shall be the responsibility of each Owner of a Condominium to notify the Association within thirty (30) days of the close of his or her escrow to purchase a Condominium, of the name and address of the holder of his or her first Mortgage on his or her particular Condominium.

14.2 **Exemption from Right of First Refusal:** Any right of first refusal shall not impair the rights of a first Mortgagee to (a) foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or (c) interfere with a subsequent sale or lease of a Condominium so acquired by the first Mortgagee.

14.3 **Subordination of Assessment Lien to Mortgages:** Any holder of a Mortgage which comes into possession of the Condominium pursuant to foreclosure of the Mortgage, shall take the property free of any claim for unpaid assessments or charges against the mortgaged Condominium which accrue prior to the time such holder comes into possession of the mortgaged Condominium. The lien assessments provided for herein shall be subordinate to the lien of any first Mortgage or deed of trust now or hereafter placed on the properties subject to assessments; provided that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Condominium pursuant to a decree of foreclosure or trustee's sale. Such transfer or sale shall not relieve the Condominium from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessments.

14.4 **Leasing:** Any lease agreement between a Condominium owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Association By-Laws and that any failure by a lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Further, with the exception of a lender in possession of a Condominium Unit following a default in a first Mortgage or foreclosure proceeding, no Unit Owner shall be permitted to lease his or her Unit for transient or hotel purposes. No Unit Owner may lease less than the entire Unit other than the foregoing, there is no restriction on the right of any condominium owner to lease his condominium.

14.5 **Prior Approval of First Mortgage Holders:** Unless at least seventy-five (75%) percent of holders of first Mortgage liens on individual Condominiums have given their prior written approval, neither the Association, nor any individual Owner shall: (a) by act or omission, seek to abandon or terminate the Condominium status; (b) change the prorata interest or obligation of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds, or condemnation awards; and for determining the prorata share of ownership of each Condominium in appurtenant real estate and any improvements thereon which are owned by Condominium Owners in the Project in undivided prorata interests ("Common Area"); (c) by act or omission, change, waive or abandon any scheme of regulation or enforcement thereof, pertaining to the architectural design or exterior appearance of any Condominiums, exterior maintenance of Condominiums, maintenance of driveways or upkeep of landscaping in the Project; (d) partition or subdivide any Unit or the Common Area; (e) by act or omission, seek to abandon, partition, subdivide, encumber, release, hypothecate, sell or transfer the Common Area, however the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Project, shall not be deemed a transfer within the meaning of this clause; (f) fail to maintain fire and extended coverage on

insurable project common property and Condominiums on a current replacement cost basis in an amount not less than one hundred percent (100%) percent of the insurable value, based on current replacement costs; (g) use hazard insurance proceeds for losses to any Condominium property for other than repair, replacement or reconstruction of such improvements; (h) make material amendments to the Declaration and/or the Association By-Laws.

14.6 **Examination of Books and Records.** The holders of first Mortgages shall have the right to examine the books and records of the Association.

14.7. **Taxes, Assessments and Charges.** All taxes, charges and assessments which may become liens prior to first Mortgages under local law, shall relate only to the individual Condominiums and not to the Project as a whole. First Mortgagees of Condominiums may jointly and singly pay taxes or other charges which are in default and which may or have become a charge against the common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such property and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

14.8 **Reserves for Replacement:** An adequate reserve fund for replacement of the Common Area facilities must be established by the Association and must be funded by regular monthly assessments rather than by special assessments.

14.9 **No Priority Over Rights of First Mortgagees:** No provision herein shall give a Condominium Owner, or any other party, priority over any rights of first Mortgagees of Condominiums pursuant to their Mortgages in the case of a distribution to Condominium Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums and/or the Common Area. Such first Mortgagees shall be entitled to timely written notice of any such damage or destruction of the Common Area, if such loss or taking exceeds \$10,000.00 or damage to a Condominium covered by a mortgage exceeds \$1,000.00. Additionally, if any Condominium or portion thereof is made the subject matter of any condemnation or eminent domain proceeding, no provision herein shall entitle the Owner of a Condominium or any other party to priority over a first Mortgagee of a Condominium with respect to any distribution to such Condominium of the proceeds of any award or settlement. Such first Mortgagees shall be entitled to timely written notice of any such proceeding or proposed acquisition.

14.10 **Further Notice to Lenders:** The Association shall give written notice to any first Mortgagee of all meetings of the Association. Each such first lien holder shall have the right to be represented at such meetings but shall have no voting rights unless it has succeeded to title to one or more of the Condominiums by foreclosure. Further, the Association shall deliver to each such first mortgagee, a copy of the Association's annual audited statement within ninety (90) days after the end of the Association's fiscal year.

14.11 **Professional Management of Project**: Any agreement for professional management of the project shall provide that any management contract or any agreement with Declarant, may be terminated, with or without cause, on thirty (30) days' notice without payment of a termination fee and that the maximum term of such contract shall be one year. In the event the Association determines to terminate professional management and assume self-management of the Project, the prior written approval of at least holders of seventy-five percent (75%) of the first Mortgages shall be required.

14.12 **Obligation to Cure Breach**: Any first Mortgagee who acquires title to any Condominium pursuant to the remedies provided in the Mortgage or through foreclosure of the Mortgage, shall not be obligated to cure any breach of this Declaration which is non-curable or of a type which is not practical or feasible to cure.

14.13 **Amendment**: No amendment of this Article shall affect the rights of any first Mortgagee recorded prior to the recordation of such amendment who does not join in the execution thereof.

14.14 **Breach of Declaration**: No breach of the covenants, conditions or restrictions contained in this Declaration, nor the enforcement of any lien provisions created herein, shall affect, impair, defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale with respect to a Condominium.

14.15 **Federal Home Loan Mortgage Corporation Requirements**: If any loan secured by a Mortgage encumbering a Condominium is owned by the Federal Home Loan Mortgage Corporation ("FHLMC") or its successors or assigns, or is tendered to the FHLMC or its successors or assigns for purchase, the Association and Owners shall obtain and maintain in full force and effect, all insurance coverages which may at any time and from time to time be required by the FHLMC or its successors or assigns and shall otherwise comply in all respects with all insurance requirements of the FHLMC which may be in effect at any time and from time to time.

14.16 **Conflict**: If there is any conflict between any provisions of this Article XIV and any other provisions in this Declaration or the Association By-Laws, the language contained in this Article XIV shall control.

ARTICLE XV BREACH

15.1 **Right of Entry**: Violation of any of the provisions, covenants, restrictions, easements or reservations contained herein shall give to the Association the right to enter the Unit

or Common Area on or at which the violation exists and to abate and remove, at the expense of the Owner thereof, anything or condition that may be or exists thereon contrary to the intent and meaning of the provisions of this Declaration. Except in case of emergency, such entry shall be made only after three (3) days' notice to said Owner and with as little inconvenience to said Owner as possible. The Association shall not thereby be deemed guilty of any manner of trespass by such entry, abatement or removal.

15.2 **Nuisance.** The result of every act or omission whereby any provision, covenant, condition, restriction, easement or reservation herein contained is violated, in whole or in part, is hereby declared to be and constitutes, a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the Association. Such remedy shall be deemed cumulative and not exclusive.

15.3 **Right of Lien Holder:** A breach of any of the provisions, covenants, conditions, restrictions, easements or reservations herein contained, shall not affect or impair the lien or charge of any bona fide first Mortgage or first deed of trust made in good faith and for value on any of the Units, provided that any subsequent Owner of the Unit shall be bound by these provisions, covenants, conditions, restrictions, easements and reservations, whether such Owner's title was acquired by foreclosure or trustee's sale.

15.4 **Enforcement:** In the event of a breach of any of the provisions, covenants, conditions, restrictions, easements or reservations hereby established the Association may enforce any and all of the terms and conditions of this Declaration. It is hereby declared that damages at law for such breach are inadequate. The restrictions provided for herein shall be enforceable equitable servitudes and shall inure to and bind all Owners of the residential units.

ARTICLE XVI AMENDMENT

This Declaration may be amended only by the affirmative vote of Owners representing a majority of the Total Voting Power. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the president of the Association and recorded in the Recorder's Office of the County of San Mateo. No amendment shall adversely affect the rights of the holder of any Mortgage of record prior to the recordation of such amendment.

IN WITNESS WHEREOF, this Amended and Restated Declaration is executed by the President of the Association.

I hereby certify and declare under penalty of perjury, that the foregoing Amended and Restated Declaration has been approved by Order of the Court filed in San Mateo County Case No. 20-CIV-03926 and pursuant to California Civil Code Section 4275.

Executed at Millbrae, California, on the 23, day of April, 2024.

BAYVIEW CONDOMINIUM ASSOCIATION, INC.

By: J. S. Joh
Jean S Joh, President Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)ss.
County of SAN MATEO

On 24 April 2024, 2024, before me, Darshanaben Patel, a Notary Public, personally appeared, Jean S Joh, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature D-A-Patel

